

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**COUNTRY FRESH, L.L.C. and MELODY FARMS, L.L.C.,  
a single Employer<sup>1</sup>**

**Employer-Petitioner**

**and**

**CASE 7-RM-1476**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO and its  
NEW WEST SIDE LOCAL 174<sup>2</sup>**

**UAW**

**and**

**LOCAL 337, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

**Teamsters**

**APPEARANCES:**

**Patricia Costello Slovak**, Attorney, of Chicago, Illinois, for the Employer-Petitioner  
**Catherine J. Trafton**, Attorney, of Detroit, Michigan, for the UAW  
**Gerry M. Miller**, Attorney, of Milwaukee, Wisconsin, for the Teamsters

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under 9(b) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

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<sup>1</sup> The parties stipulated to the addition of Melody Farms, LLC as a party to this proceeding. They further stipulated that the Employers are a single employer for the distribution employees involved in this proceeding. The record also indicates that both Country Fresh and Melody Farms are wholly owned subsidiaries of Dean Midwest II, L.L.C., which in turn is a wholly owned subsidiary of Dean Foods Company.

<sup>2</sup> The name of the UAW appears as set forth in the decision in Case 7-UC-582.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>3</sup> the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **Overview**

The Employer produces, processes, and distributes dairy products to grocery stores, convenience stores, other retail outlets, and institutions. It has plants in Grand Rapids, Flint, Detroit, and Livonia, Michigan. As a result of a 2004 consolidation of operations between Country Fresh and Melody Farms by parent company Dean Foods, the UAW and Teamsters both currently represent milk drivers working out of the Employer's milk and dairy distribution facility on Industrial Road in Livonia, Michigan. The UAW bargaining unit also includes production and maintenance employees working out of the Employer's milk and dairy production facility on Enterprise Drive in Livonia. The Teamsters bargaining unit also includes ice cream drivers working out of the Employer's ice cream production and distribution facility on Maple Road in Detroit.

The Employer filed the instant petition to determine which union should represent the milk and ice cream drivers in its consolidated distribution operation. Four additional issues must also be addressed: whether the ice cream drivers should be in the same unit as the milk drivers; whether the milk and ice cream drivers can be in a separate drivers unit only or also included in the existing production and maintenance unit; whether unrepresented milk and ice cream drivers who were hired after the Employer acquired

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<sup>3</sup> All parties filed briefs, which were carefully considered. With its brief, the Employer submitted an affidavit containing certain representations regarding Employer actions after the close of the hearing. That affidavit is not part of the record and has not been considered. On December 2, 2004, a decision issued in Case 7-UC-582 involving the parties in this case. In that decision, I found that the Employer's consolidation of its Country Fresh and Melody Farms operations resulted in a new operation, thus creating a question concerning representation concerning the milk drivers employed by both entities. All parties stipulated to the incorporation of the record from Case 7-UC-582 into the record in the instant matter.

another company, Golden Valley, should be included in the same unit as the other drivers; and whether switchers should be included in a drivers unit or the existing production and maintenance unit, if separate units are created.

The Employer and the Teamsters contend that only a separate unit of all full-time and part-time milk drivers and ice cream is appropriate.<sup>4</sup> Both agree that the former Golden Valley drivers should be included in such a unit. The Teamsters contend that switchers should not be included in the drivers unit. The Employer declined to take a position as to the unit placement of the switchers.

The UAW, in its brief, first argues that this proceeding should be held in abeyance pending the outcome of a Section 301 lawsuit filed in the federal court for the Eastern District of Michigan.<sup>5</sup> As to the merits, at the hearing, the UAW contended that the only appropriate unit would be a wall-to-wall unit of drivers, and production and maintenance employees. However, in its brief, the UAW modified its position and now contends that, if a drivers-only unit is also found appropriate, the drivers should be given an opportunity to vote in a self-determination election to decide whether they should be included in the

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<sup>4</sup> All parties agreed that the unit description should include part-time drivers. The Employer does not currently have any part-time drivers, but may hire some in the future.

<sup>5</sup> In 2004, after the Employer decided to merge the Livonia operations of Country Fresh and Melody Farms, it reached an agreement with the UAW under which all the Employer's distribution operations would be consolidated at the Country Fresh facility on Enterprise Drive. The Teamsters drivers from the Industrial Road facility were to be transferred to the Enterprise Drive facility, become members of the UAW, and be end-tailed into the UAW unit for seniority purposes.

The Teamsters filed a grievance over the merger of their unit into the UAW unit. An arbitration hearing was held in May 2004, and the arbitrator issued a decision sustaining the Teamsters' grievance and ordering the Employer to reassign the Teamsters drivers immediately to their prior routes and to adhere to its contract with the Teamsters. As a result, on July 30, 2004, the Employer announced that it would move its consolidated distribution operation from the Country Fresh facility on Enterprise Drive to the former Melody Farms facility on Industrial Road. The UAW drivers were given the option of either bumping into production positions at the plant on Enterprise Drive or becoming employed as Melody Farms drivers under the Teamsters' contract at the Industrial Road facility. The UAW drivers who came under the Teamsters' contract were dovetailed into the Teamsters' seniority list.

The UAW grieved the Employer's decision and in April, 2005, an arbitrator ordered the Employer to maintain the status quo and observe the UAW agreement for UAW drivers for the term of that agreement. As a result of the UAW grievance, the Employer, while merging the delivery routes and dovetailing the seniority lists for the purposes of route bidding, has kept the Melody Farms drivers under the Teamsters' contract and the Country Fresh drivers under the UAW contract. The milk drivers all report to work at the same location on Industrial Road and bid on the same routes. Ice cream delivery drivers continue to report to the Melody Farms facility in Detroit.

On January 9, 2006, after the close of the hearing, the UAW filed suit in the United States District Court for the Eastern District of Michigan to confirm its arbitration award. One of the remedies the UAW seeks is court-ordered tripartite arbitration between the Employer, Teamsters and UAW to resolve the conflicting arbitration awards.

The request to hold this case in abeyance pending the outcome of the UAW's suit is denied. Bargaining unit determination is a representational question reserved to the Board. The Board will not cede its authority in such matters to an arbitrator. *Massachusetts Electric Co.*, 248 NLRB 155, 156-157 (1980). In the event that representational issues arise during the Section 301 suit, the district court lacks jurisdiction to address those issues. *Carpenters Local Union No. 1478*, 743 F.2d 1271, 1278 (9<sup>th</sup> Cir. 1984). If in reviewing the matter, the court finds that either of the arbitration decisions conflict with this decision or the decision in Case 7-UC-582, it must defer to the Board's decision. *Id.* at 1278-1279; see also *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 272 (1964).

UAW's production and maintenance unit or be represented in a separate unit of drivers only. The UAW agrees that the ice cream drivers should be able to participate in any election that is ordered. Finally, it did not take a position with regard to the unit placement of the former Golden Valley drivers or the switchers.

I find that the milk and ice cream drivers, including those who formerly worked for Golden Valley, are an appropriate separate unit. However, I further find that a unit of drivers, and production and maintenance employees also would be appropriate. Thus, I will direct a hybrid self-determination election for drivers whereby they also will vote on the question of whether, if a majority of valid votes are cast for the UAW, they want to be included in the existing production and maintenance employees unit represented by the UAW or a separate drivers-only unit. Finally, I find that the switchers should remain in the existing production and maintenance employees unit without them having a vote because no union seeks to represent them as part of a separate drivers unit.

### **The current bargaining units**

In 2003, Dean Foods, parent company of Country Fresh, purchased Melody Farms. At the time of the purchase, Melody Farms produced and distributed ice cream from its location at 1000 Maple, Detroit, Michigan, and distributed dairy products from its dairy distribution facility located at 3111 Industrial Road, Livonia, Michigan. Country Fresh produced and distributed dairy products from its facility located at 31770 Enterprise Drive, Livonia, Michigan. Both Melody Farms and Country Fresh have operations in other Michigan locations, but this proceeding concerns only employees at the above locations in Livonia and Detroit.

Country Fresh and the UAW have a collective bargaining agreement, effective from October 12, 2002 through October 13, 2007. The agreement covers:

All full-time and part-time production and maintenance employees and truck drivers employed at [the Country Fresh] facility located at 31770 Enterprise Drive, Livonia, Michigan; but excluding all professional employees, confidential employees, sales employees, laboratory employees, office clerical employees, guards and supervisors as defined in the Act.

Melody Farms and the Teamsters have a collective bargaining agreement, effective July 6, 2004 through July 5, 2009.<sup>6</sup> The agreement covers:

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<sup>6</sup> No party argues contract bar, and despite the existence of two current collective bargaining agreements covering the employees affected by this proceeding, there is no contract bar. As noted earlier, it was determined in Case 7-UC-582 that a new operation had been created when the Employer consolidated its operations. A contract does not bar representation proceedings when a merger of two or more operations results in the creation of a new operation. *Massachusetts Electric Co.*, 248 NLRB 155, 157 (1980).

All full-time milk, and ice cream driver/salesperson[s], employed by the Employer at its 31111 Industrial Road, Livonia, and 1000 Maple, Detroit, Michigan facilities but excluding all other employees, guards and supervisors as defined in the Act.

### **The Golden Valley drivers**

In addition to the UAW and Teamster drivers, there are approximately 13 milk drivers and 15 ice cream drivers who are former employees of Golden Valley, a dairy distribution company purchased by Dean Foods in 2004. They were formerly represented by Local 82, Retail, Wholesale and Department Store Union (RWDSU).<sup>7</sup> They are currently not represented by any union.<sup>8</sup>

### **The consolidated operation**

#### ***Milk and ice cream drivers***

All of the Employer's milk delivery routes have been merged into its Melody Farms distribution operation and, as of the date of the hearing, were housed at the Employer's facility at 31111 Industrial Road, Livonia. The UAW and Teamsters seniority lists have been dovetailed into one list. UAW drivers are on the Country Fresh payroll, and the Teamsters and former Golden Valley drivers are on the Melody Farms payroll. There are approximately 74 milk drivers in total, 13 of whom are former Golden Valley drivers.

Milk drivers typically work a five-day work week, Monday through Saturday, with a rotating day off. The rotating days off are covered by swing drivers. The drivers average 52 hours per week. Their day begins between 5:00 and 6:30 a.m. All the milk drivers are required to have a CDL A license. Milk deliveries are made using either straight trucks or tractor-trailers, depending on the type of delivery.

All the milk drivers report to work at the Employer's Melody Farms distribution facility, punch in, get their trailer assignment and handheld computer, pick up the tractor portion of their trucks and do pre-trip inspections of them. The drivers then proceed to the Employer's Country Fresh dairy production facility on Enterprise Drive to pick up

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<sup>7</sup> Local 82, RWDSU is not a party to this proceeding.

<sup>8</sup> At the time of the hearing, the former Golden Valley milk and ice cream drivers had been placed into the Teamsters' bargaining unit and were on the Melody Farms payroll. After the hearing, the UAW filed an unfair labor practice charge in Case 7-CA-48675 against the Employer, alleging that it had violated Sections 8(a)(2) and (5) of the Act by recognizing the Teamsters as the representative of the former Golden Valley drivers. The processing of the instant decision was delayed awaiting a determination in that case. I found that the charge had merit, and the case was settled unilaterally on October 13, 2005. The UAW appealed the settlement; the appeal was denied by the General Counsel on November 18, 2005. As a result of the settlement, the Golden Valley drivers are not represented by either union.

their trailers. After completing their deliveries, the drivers drop off their trailers at the production facility, then punch out at the distribution facility.

The straight trucks and trailers used by milk drivers are loaded by cooler employees from the UAW production and maintenance unit at the Enterprise Drive production facility. The loading is usually done before the drivers arrive to pick up the trailers. Instructions from the driver about how the driver would like the trailer loaded are communicated through driver supervisors to supervisors in the cooler department. The drivers and the cooler employees do not communicate directly. However, if there is a problem with a truck or a need to make a change in the load, the driver and the loader may work together to correct the problem.

With the exception of the former Golden Valley ice cream drivers, all the ice cream drivers report to the Employer's Melody Farms production and distribution facility at 1000 Maple Road, Detroit. At the time of the hearing, the former Golden Valley ice cream drivers were still working out of the Golden Valley facility in Hamtramck, Michigan. Plans were being made to close that facility and move all the ice cream drivers to the Employer's Maple Road facility in Detroit. There are approximately 42 ice cream drivers: 25 Teamsters drivers, 2 UAW drivers, and 15 former Golden Valley drivers.

Ice cream drivers typically work Monday through Friday, 40 hours per week in the winter and 50 or more hours per week in the summer. Their day begins between 5:00 and 6:30 a.m. All of the ice cream drivers are required to have a CDL A license. Ice cream deliveries are made using either straight trucks or tractor-trailers, depending on the type of delivery.

Some milk and ice cream drivers switch between milk and ice cream routes in response to seasonal changes in product use. Milk distributions typically drop off by about 10% in the summer, while ice cream distributions increase. This results in changes in the size and number of routes. These changed routes are bid by seniority, and some milk drivers drive ice cream routes in the summer, while some ice cream drivers drive milk routes in the winter. About three to four routes are typically involved in these seasonal changes. Drivers also may take over other routes because of injuries or other unplanned vacancies.

Overtime opportunities for the milk drivers are posted at the Country Fresh Enterprise Drive facility first. If any shifts remain after the milk drivers have been given an opportunity to bid on them, they are posted at the Melody Farms Maple Road facility for the ice cream drivers.<sup>9</sup>

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<sup>9</sup> There was no evidence in the record as to whether overtime opportunities were also posted at the Golden Valley ice cream facility in Hamtramck.

### ***Switchers***

There are five switchers employed at the Employer's Country Fresh dairy production facility on Enterprise Drive. The switchers are currently represented by the UAW. The switchers operate small tractors and move trailers around the production facility premises. About once a month, a switcher may drive off the production facility premises to pick up a load from another location.<sup>10</sup> These assignments are made on an emergency basis when no drivers are available. The switchers all have CDL licenses.

Prior to the Employer's 2004 move of its distribution operation to the Industrial Road location in Livonia, the switchers were included in the distribution department, and supervised by distribution managers, at the Enterprise Drive facility. After the move, the distribution department relinquished supervisory control over the switchers. They are now supervised by production managers at the Enterprise Drive facility. They are not entitled to bid on driver routes.

### ***Production and maintenance employees***

The Employer's Country Fresh production facility on Enterprise Drive produces milk, juices, mixes, and dairy products. These products are distributed by the Employer's distribution department and by third party distributors not owned by the Employer. There are approximately 130 to 140 production and maintenance employees in the UAW bargaining unit. Approximately 15 of those employees are in the maintenance department and the rest are production employees. The production plant operates on three rotating shifts, from 7:00 a.m. to 3:30 p.m., 3:00 p.m. to 11:30 p.m., and 11:00 p.m. to 7:30 a.m.

Approximately three or four production and maintenance employees have CDL licenses. These employees were drivers who opted to transfer into positions in the plant. Drivers may also transfer to the plant on a temporary basis when unable to drive due to a disability or injury. Production employees have transferred to driver positions approximately three or four times in the past several years. Employees who express an interest in becoming drivers may be put into a switcher position. If they do well in that position and obtain a CDL A license, they may be transferred into the distribution department as jobs become available.

### ***Organization and Supervision***

With the exception of driver payroll and other matters governed by the collective bargaining agreements with the UAW and the Teamsters, the operations of Country Fresh and Melody Farms have been merged. The merged administrative, human resources, payroll, accounting and sales offices are located in the Enterprise Drive complex in

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<sup>10</sup> The record does not indicate what "loads" are picked up.

Livonia. These offices are in the same building as the production facility, but there are separate, unrelated businesses between them and it is necessary to go outside to get from one to the other.

Jerry Shannon is the general manager. He oversees milk and ice cream distribution for Country Fresh and Melody Farms, the Country Fresh production facility on Enterprise Drive, human resources, and sales. Terri Moore is the director of human resources. Mark Pettit is the plant manager for the Country Fresh production facility. Jim Miller is the distribution manager for milk, with several distribution supervisors reporting to him. Roy Konieczny is the plant manager for ice cream. The ice cream distribution manager and supervisors report to Konieczny. Plant supervisors do not have any authority over distribution employees, and distribution supervisors do not have any authority over plant employees.

## **Analysis**

In Case 7-UC-582, the UAW sought to accrete the milk drivers represented by the Teamsters into the UAW bargaining unit. I determined that the consolidation of the Country Fresh and Melody Farms facilities resulted in a new operation, thus creating a question concerning representation and making accretion inappropriate. I noted that the UAW sought to carve out part of the Teamsters unit of milk and ice cream drivers, while at the same time maintaining that its own wall-to-wall unit of production, maintenance and driver employees should remain intact. I left consideration of those unit issues to future proceedings, but noted that the UAW's attempt to bifurcate the Teamsters unit while leaving its own unit intact was further evidence that accretion was not appropriate. With the filing of this petition by the Employer, the various unit issues must be resolved.

### ***Milk and ice cream drivers as an appropriate unit***

In determining whether a unit is appropriate, such factors as functional integration, frequency of contact with other employees, interchange, common skills and job functions, commonality of wages, hours and working conditions, and shared supervision are relevant considerations. ***Publix Super Markets***, 343 NLRB No. 109, slip op. at 2 (Dec. 16, 2004). In situations involving more than one facility, the Board also looks at such factors as central control over daily operations and labor relations, distance between facilities, and bargaining history, if any. ***Dattco, Inc.***, 338 NLRB 49, 50 (2002); ***Budget Rent-A-Car Systems, Inc.***, 337 NLRB 884, 885 (2002).

The milk and ice cream drivers work out of different facilities. However, they perform the same job functions and possess the same skills. Both are required to carry a CDL A license. Both drive tractor-trailer or straight trucks, depending on the delivery location. Terri Moore oversees labor relations for both groups. The Teamsters-represented milk and ice cream drivers share a history of common bargaining. There is



evidence of interchange between the two groups of drivers. Milk demand rises in the fall and drops in the summer, when ice cream demand rises. As a result, three to four drivers commonly change from milk to ice cream routes on a seasonal basis. In addition, drivers switch routes on an emergency basis and are able to bid on overtime routes at each facility when that facility's regular drivers have turned it down. Evidence of temporary interchange is particularly significant in determining whether a multi-facility unit is appropriate. *Dattco, Inc.*, supra at 51.

On the other hand, drivers and production employees perform different job functions, have separate supervision, and have little daily interaction with each other. *Rinker Materials Corp.*, 294 NLRB 738, 739 (1989). The drivers spend very little time on the plant premises, while the production and maintenance employees are confined to the plant at all times, with the exception of occasional emergency deliveries by switchers. These factors, taken together, create two groups with their own respective community of interest. *Id.* While there is some evidence of interchange of employees between the distribution and production departments, it is not to such an extent so as to destroy the integrity of the groups as separate bargaining units. *Martin-Marietta Corp.*, 139 NLRB 925, 927 (1962).

All the parties agree that a unit of milk and ice cream drivers is appropriate. In light of the similar skills and job functions, centralized labor relations, bargaining history, and interchange between the employees, I agree, and find that a unit of milk and ice cream drivers separate from production and maintenance employees is appropriate.

### ***The former Golden Valley drivers***

The Employer and the Teamsters contend that the former Golden Valley drivers should be included in the same unit as the other milk and ice cream drivers. The UAW has not taken a position as to the unit placement of the Golden Valley drivers. At the time of the hearing, the Golden Valley milk drivers worked out of the same distribution facility as the UAW and Teamsters milk drivers. The ice cream drivers worked out of a separate facility from the represented ice cream drivers, but with plans to merge operations with the Employer's Melody Farms Maple Road ice cream distribution facility. The former Golden Valley milk distribution operation has been completely merged with the Employer's operation, and the drivers perform the same work. The Hamtramck ice cream operation was about to be merged with the Employer's Maple Road ice cream distribution operation. Therefore, I conclude that the former Golden Valley milk and ice cream drivers should be included in the same unit as the UAW and Teamsters-represented drivers.

### *The switchers*

Before the 2004 consolidation, the switchers were included in the distribution department with the UAW drivers. They still occasionally perform driver duties and are required to hold the same CDL A license as the drivers. However, they are now supervised by production managers at the Country Fresh production facility. More importantly, the Employer did not seek to include them in its petition, the Teamsters contend the switchers should be excluded from the drivers unit, and the UAW already represents them and does not seek to have them included in the directed election. As no union seeks to represent the switchers as part of a separate drivers unit, I find that it is not appropriate to include them in such a unit. Rather, the switchers should remain in the production and maintenance unit. See *Carr-Gottstein Foods Co.*, 307 NLRB 1318, 1319 (1992); *Phototype, Inc.*, 145 NLRB 1268, 1273 (1964).

### *Self-determination election*

I have already found that a separate drivers unit is appropriate. However, the evidence shows that a unit of drivers, and production and maintenance employees also would be appropriate. See *Rinker Materials Corp.*, 294 NLRB 738, 739 (1989). The UAW-represented drivers have historically been included in a unit with production and maintenance employees, and there is a long history of collective bargaining in that unit. *General Electric Co.*, 89 NLRB 726, 735 (1950). In addition, there is some evidence of employee transfers between the distribution and production departments on both a permanent and temporary basis, and occasional employee contact. See *Cumberland Farms, Inc.*, 167 NLRB 593, 594 (1967).

### **Conclusion**

In light of the above, and the record as a whole, I conclude that a unit of all milk and ice cream drivers, including former Golden Valley drivers, or a unit of all milk and ice cream drivers, and production and maintenance employees, are appropriate. I further conclude that switches shall remain in the production and maintenance employees unit and not be allowed to vote in the directed election. Thus, the drivers will be given an opportunity to vote on whether they wish to be represented by the UAW, Teamsters, or neither, and by means of a hybrid self-determination election, to decide whether, if a majority of valid votes is cast for the UAW, they desire to be in a drivers-only unit or in the existing production and maintenance employees unit.

5. In view of the foregoing, I find that the following employees may constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time milk and ice cream drivers employed by the Employer at its facilities located at 31770 Enterprise Drive, Livonia, 1000 Maple Road, Detroit, and Hamtramck, Michigan; but excluding all professional employees, confidential employees, sales employees, laboratory employees, office clerical employees, and guards and supervisors as defined in the Act, and all other employees.<sup>11</sup>

The employees will be asked the following two questions on their ballot:

1. Do you wish to be represented for the purposes of collective bargaining by the UAW, Teamsters, or neither?
2. If a majority of valid votes is cast for the UAW, do you wish to be in a drivers-only unit or included in the existing production and maintenance employees unit?

If a majority of the valid votes cast is cast for the Teamsters, the votes on the second question will not be counted, and I find the following will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time milk and ice cream drivers employed by the Employer at its facilities located at 31770 Enterprise Drive, Livonia, 1000 Maple Road, Detroit, and Hamtramck, Michigan; but excluding all professional employees, confidential employees, sales employees, laboratory employees, office clerical employees, and guards and supervisors as defined in the Act, and all other employees.

On the other hand, if a majority of the valid votes cast is cast for the UAW, the votes on the second question will be counted. If a majority of the valid votes cast on the second question is cast for a drivers-only unit, I find the following will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time milk and ice cream drivers employed by the Employer at its facilities located at 31770 Enterprise Drive, Livonia, 1000 Maple Road, Detroit, and Hamtramck, Michigan; but excluding all professional employees, confidential employees, sales employees, laboratory employees,

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<sup>11</sup> If the ice cream drivers formally employed by Golden Valley have been merged with the other ice cream drivers and moved from the Hamtramck location, that location will not be listed in the Notice of Election or any subsequent certification that may issue.

office clerical employees, and guards and supervisors as defined in the Act, and all other employees.

If a majority of the valid votes cast on the second question is cast for inclusion in the existing production and maintenance employees unit, I find the following will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, and milk and ice cream drivers employed by the Employer at its facilities located at 31770 Enterprise Drive, Livonia, 1000 Maple Road, Detroit, and Hamtramck, Michigan; but excluding all professional employees, confidential employees, sales employees, laboratory employees, office clerical employees, and guards and supervisors as defined in the Act, and all other employees.

Those eligible shall vote as set forth immediately above. Also see the attached Direction of Election.

Dated at Detroit, Michigan, this 2nd day of May 2006.

(SEAL)

"/s/[Stephen M. Glasser]."

/s/ **Stephen M. Glasser**

Stephen M. Glasser, Regional Director  
National Labor Relations Board  
Seventh Region  
477 Michigan Avenue – Room 300  
Detroit, MI 48226-2569

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

## LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **May 9, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **May 16, 2006**.

## POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. \*/

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

\*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.